

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

UNITED STATES OF AMERICA,

Plaintiff,

and

SIERRA CLUB,

Intervenor-Plaintiff,

v.

DTE ENERGY COMPANY AND
DETROIT EDISON COMPANY,

Defendants.

Civil Action No.
2:10-cv-13101-BAF-RSW

Judge Bernard A. Friedman

Magistrate Judge R. Steven
Whalen

**JOINT MOTION AND BRIEF FOR FURTHER STAY PENDING
SETTLEMENT NEGOTIATIONS,
AND STATUS REPORT ON NEGOTIATIONS**

Pursuant to Local Rule 7.1(a), the Parties jointly move for an approximately one-month stay of this case while they continue to engage in settlement negotiations seeking to resolve this case in its entirety. All Parties—Plaintiff United States of America (“United States”), Defendants DTE Energy Company and Detroit Edison Company (collectively, “DTE”), and Plaintiff-Intervenor Sierra Club—join in this motion.

This joint filing also serves as the Parties’ status report on negotiations, as required by the Court’s order granting the current stay. [ECF No. 258].

In further support of this motion, the Parties state the following:

1. This litigation began in 2010 when the United States filed its complaint and motion for preliminary injunction. On November 23, 2010, Sierra Club's motion to intervene as a plaintiff in this proceeding was granted. The litigation has been to the United States Court of Appeals for the Sixth Circuit twice. The Court granted summary judgment for a second time to DTE on the claim in the original complaint on March 3, 2014 [ECF No. 196], and Plaintiffs again appealed to the Sixth Circuit [ECF Nos. 221, 222]. By judgment dated January 10, 2017, the Sixth Circuit reversed and remanded in a 2-1 decision with three separate opinions. [Case nos. 14-2274, 14-2275, Doc. 40-2]. DTE timely filed a petition for certiorari to the United States Supreme Court, which was denied by order dated December 11, 2017. [See ECF No. 235]. The Sixth Circuit's mandate was issued on December 14, 2017, and was received by the clerk of this Court on the same day. [ECF No. 236].

2. On December 13, 2018, the Court granted the Parties' joint motion to continue the stay of the litigation to pursue settlement negotiations for six months. [ECF No. 244]. The Court thereafter granted the Parties' subsequent joint motions to extend the stay for additional time through April 6, 2020. [ECF No. 246, 248, 250, 252, 254, 256, 258].

3. Since that time, the Parties have made significant progress in settlement discussions. Attorneys for the Parties have drafted a consent decree and have submitted the draft decree for approval from the responsible officials for the United States. Those officials have reviewed the draft decree and proposed certain changes to the proposed agreement, which counsel has described to the other Parties and expects to provide proposed language for this week. The Parties are hopeful that a one-month extension of the current stay will allow them to resolve these last issues and obtain consent decree signatures.

4. If the Parties successfully finalize a proposed consent decree, the next step will be for the United States to file the decree with the Court and solicit public comment, pursuant to 28 C.F.R. § 50.7. The United States would then report any public comments to the Court and seek the Court's approval of the decree if appropriate in light of the public comments.

5. The Parties believe that the continuing expense and uncertainty of this expansive litigation favors exploring whether a resolution by agreement can be reached before the parties re-engage in full-blown discovery and trial preparation on multiple, complex claims. Both judicial efficiency and conservation of the Parties' resources favor a further stay while they pursue these settlement negotiations.

6. Therefore, the Parties respectfully request that the Court extend the stay of this litigation through May 6, 2020. The Parties propose that at that time they would provide the Court a status report on negotiations and a recommendation for next steps.

BRIEF IN SUPPORT OF MOTION

For their Brief in Support of their Joint Motion for Stay Pending Settlement Negotiations, the Parties rely upon the reasons and authority set forth in the Motion.

Respectfully submitted, this the 6th day of April 2020.

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